merchant fearing bankruptcy compelled his employees to make a donation to the concern by threatening to discharge them. That, of course, is doing no more than threatening to break his contract. The court held that this was force and that the donation was voidable.[16]

So long as the courts feel bound to apply the existing rule, even in cases where the intention of the parties is clear and the change of terms is dictated by equitable considerations, lawyers and business men must adjust themselves to that rule. Probably the simplest way to satisfy the formal requirement of a change in the consideration is for the manufacturer to promise to transfer or actually to transfer an article of small value, such as a jackknife, as well as to perform the work originally agreed upon. The common law insistence that there must be some consideration will then be countered by its stern refusal to appraise consideration, and uncompromising legal logic be hoisted by its own petard.

M. R.

CORPORATIONS: ACTION ON STOCKHOLDER'S LIABILITY: JUDGMENT AGAINST CORPORATION AS EVIDENCE—In *Ellsworth v. Bradford*[1] the plaintiff sued to enforce against certain corporate stockholders the statutory liability prescribed by section 322 of the Civil Code, alleging that the corporation had converted his stock. It was held that a prior judgment in conversion against the corporation was admissible as prima facie but not conclusive evidence in the plaintiff's behalf. This is the first case in California which definitely holds a prior judgment against the corporation admissible in an action under section 322, as in reviewing earlier cases[2] where such judgments had been admitted by the trial court, the Supreme Court did not pass upon the correctness of this ruling.

It is a universal rule that a judgment binds only parties or privies thereto[3] and where offered in evidence against a stranger will be excluded as *res inter alios acta*.[4] Nevertheless it has been held in many states that a prior judgment against a corporation is admissible and conclusive against the stockholder.[5] Usually the

---

[16] 2 Planiol, Traité El. de Droit Civil (8th ed.) § 1072. 2 Dalloz (1893) 359, decision of the court of Bastia.

[1] (June 22, 1921) 62 Cal. Dec. 1, 199 Pac. 335.

[2] McGowan v. McDonald (1896) 111 Cal. 57, 43 Pac. 418; Mitchell v. Beckman (1883) 64 Cal. 117, 28 Pac. 110.

[3] Wigmore on Evidence § 1348, Subd. 2, a; Black on Judgments (2d ed.) § 600.

[4] Jones on Evidence, § 588.

[5] Inhabitants of Brewer v. Inhabitants of Gloucester (1817) 14 Mass. 216; Donworth v. Coolbaugh (1857) 5 Iowa 300; Steffins v. Gurney (1900) 61 Kans. 292, 59 Pac. 725; Miliken v. Whitehouse (1860) 49 Me. 527; Holland v. Duluth (1896) 65 Minn. 324, 68 N. W. 50, 60 Am. St. Rep. 480; Heggie v. Peoples' etc. Assoc'n. (1890) 107 N. C. 581, 12 S. E. 275; Wilson, McElroy & Co. v. Stockholders of Pittsburg Coal Co. (1862) 43 Pa. St. 424; Willoughby v. Chicago Junction R. Co. (1892) 50 N. J. E. 656, 25 Atl. 277; Castleman v.

courts make no distinction between cases involving suits to collect unpaid stock subscriptions and those brought to enforce an additional statutory liability, nearly always secondary — unlike our own.[6] The ground for these decisions is that the stockholders have really been parties to the former suit in their corporate capacity.[7] The relation between a corporation and its stockholders is one which it is difficult to define.[8] It does not seem, however, that in strict logic the stockholder has been a party or privy to the prior suit. But where the statutory liability, like the liability on unpaid stock, attaches only after that of the corporation has been established, the judgment is relevant to show the discharge of a necessary condition precedent. Once having become admissible it seems proper that it should be conclusive of the facts therein adjudicated. However, where the judgment is held conclusive, the stockholder may set up as a defense that it was obtained by actual fraud or collusion.[9] But in California, because the peculiar statutory liability[10] makes the stockholder liable as principal debtor, and because the creditor can enforce this liability without any adjudication against the corporation, the reasoning of these cases seems inapplicable.

The New York Court of Appeals under a statute very similar to ours has held a prior judgment against a corporation inadmissible for any purpose.[11] The court argues that a judgment by its very nature and inseparable character cannot be other than conclusive if evidence at all, and that since the obligation is primary, a judgment against a corporation cannot be conclusive against a stockholder.

The court in the principal case admits the logic of this argument but thinks that grounds of public policy[12] as well as the existence

---

Templeman (1895) 87 Md. 456, 40 Atl. 275, 41 L. R. A. 367; Glenn v. Liggett (1890) 135 U. S. 533. 34 L. Ed. 202. 10 Sup. Ct. Rep. 867; Royal Arcanum v. Green (1915) 237 U. S. 531, 59 L. Ed. 1089, 35 Sup. Ct. Rep. 724; Stutz v. Handley (1890) 41 Fed. 531. See also monograph, 97 Am. St. Rep. 463; 14 C. J. 1062; Morawetz on Private Corporations § 886; Black on Judgments § 583.

[6] See monograph, 97 Am. St. Rep. 465 and ff.

[7] Morawetz on Private Corporations § 619; Marin v. Augedahl (1917) 247 U. S. 142, 150, 62 L. Ed. 1038, 38 Sup. Ct. Rep. 452. The rule logically applies to non-resident stockholders. Hawkins v. Glenn (1889) 131 U. S. 319, 33 L. Ed. 184, 9 Sup. Ct. Rep. 739.

[8] In Favorite v. Superior Court (1919) 181 Cal. 261, 184 Pac. 15, 8 A. L. R. 290, the court said: "A stockholder in a corporation is not a party to an action in which the corporation itself is a party."

[9] Ball v. Reese (1897) 58 Kans. 614, 50 Pac. 875 (no jurisdiction); National Exchange Bank v. Wiley (1905) 195 U. S. 257, 49 L. Ed. 184 25 Sup. Ct. Rep. 70; Town of Hinckley v. Kettle River R. Co. et al. (1900) 80 Minn. 32, 82 N. W. 1088; monograph, 97 Am. St. Rep. 469.

[10] Cal. Const., Art. XII, § 3; Buttner v. Adams (1916) 236 Fed. 105, 149 C. C. A. 315.

[11] Miller v. White (1872) 50 N. Y. 137; Assets Realization Co. v. Howard (1914) 211 N. Y. 430, 105 N. E. 680.

[12] This doctrine tends to obviate litigation upon points already fully discussed in the suit against the corporation, and this is its principal

of persuasive authority[13] are enough to permit the court to give presumptive weight to such a judgment. Moreover the case seems within section 1851 of the Code of Civil Procedure, which says, "where the question in dispute between the parties is the obligation or duty of a third person, whatever would be evidence for or against such person is prima facie evidence between the parties."

M. M. P.

CORPORATIONS: LIABILITY OF A STOCKHOLDER UPON THE ASSIGNMENT OF A LEASE TO A CORPORATION — In *Realty & Rebuilding Company v. Rea*[1] a lease containing a covenant to pay rent and an option to extend the lease was assigned to a corporation which later exercised the option, giving notice to the lessor that it did so "under and upon and subject to all the terms and conditions in said lease." Subsequently, and more than three years after the assignment, individual stockholders of the assignee corporation were sued for rent recently fallen due. The defense was made that the liability, even for the extended term, dated from the assignment, and hence that the action was barred by section 359 of the Code of of Civil Procedure.[2] The Supreme Court, however, overruling the District Court of Appeal,[3] held that the liability did not date back to the assignment. The precise ground upon which the court rested its decision seems to be that the notice given by the assignee at the time of exercising the option was not a mere exercise of the option to extend but amounted to a new, independent contract by the assignee to perform the covenants of the lease, imposing an obligation separate and distinct from any assumed by him by virtue of the assignment or of the extension.

A new contract could, of course, be superimposed upon all previous obligations, and would start a fresh line of liability: but there are two objections to the court's position. First, it is difficult to see what consideration was given by the lessor, whose only act was to accept a notice that the assignee had chosen to exercise his legal rights.[4] Second, it is unnatural to construe a

---

practical advantage. On the other hand, unless carefully applied, there is a possibility of hardship to the defendant stockholder.

[13] Wheatley v. Glover (1906) 125 Ga. 710, 154 S. E. 626; In re Warren's Estate (1884) 52 Mich. 557, 18 N. W. 356, Smith v. Dixon (1912) 150 Wis. 110, 135 N. W. 841.

[1] (December 27, 1920) 61 Cal. Dec. 11, 194 Pac. 1024.

[2] ". . . actions against directors or stockholders of a corporation . . . . to enforce a liability created by law. . . .must be brought within three years after the liability was created."

[3] Realty & Rebuilding Co. v. Rea & Sullivan (1920) 31 Cal. App. Dec. 315, 188 Pac. 621.

[4] Similarly it has been held that the lessor's consent to the assignment of a lease is no consideration for the assignee's promise to be personally liable for rent, if the lessor's consent was not necessary to the assignment: Dougherty v. Matthews (1865) 35 Mo. 520, 88 Am. Dec. 126; Stern v. Florence Sewing Machine Co. (1876) 53 How. Prac. (N. Y.) 478; Seventy Eighth St. etc. Co. v. Purssell Mfg. Co. (1915) 155 N. Y. Supp. 259; Ann. Cas. 1916E 810.